IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 24458 of 2005(J)

PETITIONER:

C.S. ANILKUMAR,
ENGINEERING INSTRUCTOR (MECHANICAL ENGINEERING),
GOVERNMENT TECHNICAL HIGH SCHOOL, NEDUMANGAD.

BY ADV. SRI.KRB.KAIMAL
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, HIGHER EDUCATION (L) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, ALONG WITH WPC NO. 26027 OF 2005, THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

WPC NO.24458/05

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE JUDGMNET OF THIS HON'BLE COURT IN OP NO.1905 OF 2002 DATED 14.8.2003.

EXT.P2: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP NO.34441 OF 2000 DATED 6.3.2003.

EXT.P3: TRUE COPY OF THE LETTER NO.36409/L.3/03/H.EDN. DATED 18.12.2004 OF THE IST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER G.O(RT) NO.1100/2005.H.EDN. DATED 24.6.2005 ISSUED BY THE IST RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.

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W.P.(C) NOs. 24458 & 26027 OF 2005

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Dated this the 18th day of August, 2007

J U D G M E N T

Petitioners' are diploma holders in Mechanical Engineering, who commenced service as Demonstrators in the Kerala Technical Education Subordinate Service from 31/1/83 and 19/2/83 respectively. So far as the petitioner in WPC 24458/05 is concerned, he was promoted as Engineering Instructor w.e.f. 21/10/95 and petitioner in WP(C) 26027/05 was initially promoted as Assistant Lecturer on 21/10/95 and was thereafter reposted as Engineering Instructor w.e.f. 4/5/2000. In these writ petitions, petitioners are claiming promotion to the post of Lecturer in Poly Technic.

2. The method of appointment, qualification etc have been as laid down in the Kerala Technical Education Service Special Rules which were amended by Amendment Rules 1989, with retrospective effect from 23/9/84. In terms of the said rule, for the post of Lecturer, a degree in appropriate branch of

Engineering with not less than 60% marks in the qualifying examination is the prescribed qualification. Rule however provides that in the case of promotions from the feeder category, 60% marks will not be insisted upon. Petitioners admittedly are not degree holders. But however, they claim the benefit of Clause 5 of the Rules, which is extracted below for reference.

> (5). Nothing contained in the Kerala Technical Education Service (Amendment) Rules, 1989 shall apply to those in the feeder category to the above post who are already in service before the date of commencement of the said rules. But the personnel promoted, if any during the interim period (i.e., from 23/9/1984 to the date of issue of this order) shall not be adversely affected.

3. It is contended that having entered service prior to 23/9/94, when the amended rules came into force, they are entitled to the protection provided in Clause 5 of the Rules.

4. In my view, they are not entitled to the protection of Rule 5 for the reason that the benefit of Rule 5 is available only to those who are in the feeder category to the post of Lecturer, and in service before the commencement of the said Rules. The Rule therefore extends protection only to those candidates who

are in service and in the feeder category before 23/9/84.

5. This issue has been considered by a Division Bench of this Court in the case of **Radhakrishan v. Sunoj (2000(1) KLT 774)**, where it has been held as follows:

> It has to be noted that Cl.(5) deals with two categories of cases. One relates to those who are in the feeder category on the relevant date and those who are promoted during the interregnum. This is clear from a reading of Clause (5) itself. If the interpretation given by the learned Single Judge is accepted, there would be a third category covered by Cl.(5). Then the categories would be :(a) those promoted during the interregnum i.e., from 23/9/1984 to the date of issue of the order (21.12.1989), (b) those who are in the feeder category before the commencement of the Rules and © those who are not in the feeder category, but are holding some other posts. Such a contemplation cannot be spelt out from the Rules. The concession was extended to persons in the feeder category at the relevant time and not to those who come to the feeder category after the stipulated date. The other category of persons who got the benefit related to those who were in the feeder category and got promotion during the interim period (i.e. From 23/9/84 to the date of issue of the order i.e. 19/12/1989). The amended provision gave the relaxation to those who got promotion to the feeder category. In other words, it is only those who are in the feeder category get the exemption from requisite qualification when they get promotion. It cannot certainly be the intention to cover those not in the feeder category during the interim period to get the

exemption. A combined reading of the relevant provision makes this position clear. Even without the aid of the Explanatory Note this position emerges.

6. Admittedly, petitioners came to the feeder category post of Engineering Instructor only w.e.f. 21/10/95 and 4/5/2000. Thus they having come to the feeder category much later to 23/9/84 when the amended rules came into force, are not entitled to the protection extended by Clause 5 of the Rules. Therefore, petitioners are unqualified for the post of Lecturer and rejection of their claim is legal

7. In the result, there is no merit in the claim by the writ petitioners and the impugned orders, Exhibit P6 order in WP(C) 26027/05 and Ext.P4 order in WP(C) 24458/05 are legal and valid and do not call for any interference.

Writ petitions lacks merit and are liable to be dismissed.

ANTONY DOMINIC, JUDGE.

Rp